

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

<p>IN RE:</p> <p>OFFICE OF CONSUMER ADVOCATE,</p> <p style="padding-left: 100px;">Complainant,</p> <p style="text-align:center">vs.</p> <p>DIRECTORY BILLING LLC, d/b/a USDIRECTORY.COM,</p> <p style="padding-left: 100px;">Respondent.</p>	<p style="text-align:right">DOCKET NO. FCU-07-7 (C-07-152)</p>
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PROCEDURAL ORDER AND NOTICE OF HEARING

(Issued July 5, 2007)

On March 27, 2007, Mr. Jay Eickemeyer filed a complaint with the Utilities Board (Board) against Directory Billing LLC, d/b/a USdirectory.com (USdirectory), alleging that USdirectory placed an unauthorized charge of \$49.95 on his business's telephone bill. Mr. Eickemeyer also complained that when he called to cancel the service on March 5, 2007, USdirectory tried to sell him on keeping the listing.

Board staff investigated the complaint and forwarded it to OAN Services, Inc. (OAN) for response. OAN forwarded the complaint to USdirectory. USdirectory responded to the complaint in a letter filed April 10, 2007. USdirectory stated in the letter that an employee named Trent had authorized the on-line directory service and charges of \$49.95 per month.

On April 16, 2007, Board staff issued a proposed resolution finding that USdirectory failed to file acceptable proof that the charges were authorized and finding USdirectory in violation of the Board's cramming rules. Staff stated that, although USdirectory acknowledged it recorded the conversation with the employee named Trent, USdirectory had not provided a copy of the recording to staff. Staff noted that USdirectory had cancelled the account and issued a refund of \$49.95 to Mr. Eickemeyer's business account.

On April 16, 2007, USdirectory e-mailed a copy of the recording to staff and followed this with a letter filed on April 27, 2007. In the letter, USdirectory stated although it was certain it had complied with Iowa law, it had issued Mr. Eickemeyer's business a full credit of \$249.75.

The Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed a petition for a proceeding to consider a civil penalty for a cramming violation on April 23, 2007. On May 3, 2007, the Consumer Advocate filed an amendment to its petition.

On May 3, 2007, USdirectory filed a request for an extension of time to file its response. On May 7, 2007, USdirectory filed a response to the Consumer Advocate's petition for a proceeding to consider a civil penalty. USdirectory filed a response to the Consumer Advocate's amended petition on May 14, 2007.

The details of the informal complaint case are contained in informal complaint file number C-07-152, which is incorporated into the record in this case pursuant to 199 IAC 6.7.

On June 18, 2007, the Board issued an order finding there are reasonable grounds for further investigation of this matter, granting the Consumer Advocate's petition, docketing the case for formal proceeding, and assigning it to the undersigned administrative law judge.

Pursuant to the Board's order and Iowa Code §§ 476.3 and 476.103, and 199 IAC 6.5, a procedural schedule will be established and a hearing date set.

The statutes and rules involved in this case include Iowa Code §§ 476.3 and 476.103 and Board rules at 199 IAC 1.8, 1.9, 22.23, and chapters 6 and 7. Links to the Iowa Code and the Board's administrative rules (in the Iowa Administrative Code (IAC)) are contained on the Board's Web site at www.state.ia.us/iub.

THE ISSUES

The issues in this case generally involve USdirectory's billing Mr. Eickemeyer's business account \$49.95 per month for the on-line directory service at issue in this case, whether USdirectory complied with applicable law when it did so, whether imposition of a civil penalty is appropriate, and the factors regarding the amount of civil penalty in Iowa Code §476.103(4)(b). The issues also include why the charge on Mr. Eickemeyer's bill appeared as "YP Directory" and why USdirectory stated in its response to Board staff that, in addition to issuing a one-month courtesy credit to the customer, it had decided to refund an additional \$249.75, which it stated in an e-mail to staff dated April 16, 2007, "constituted a full refund for all services charged." The parties may raise other issues prior to and during the hearing.

TESTIMONY AND EXHIBITS

All parties will have the opportunity to present and respond to evidence and make argument on all issues involved in this proceeding. Parties may choose to be represented by counsel at their own expense. Iowa Code § 17A.12(4). The proposed decision that will be issued in this case must be based on evidence contained in the record and on matters officially noticed. Iowa Code §§ 17A.12(6) and 17A.12(8).

Although it is customary in Board cases to file prepared testimony prior to the hearing, it is not necessary in this case. The parties' positions have been the subject of an informal proceeding and the case does not appear to include complex facts. The parties agreed that the use of prepared testimony is not necessary and agreed to the hearing date set forth below. Therefore, the parties will present their cases at the hearing without the use of prepared testimony.

PARTY STATUS AND COMMUNICATION WITH THE BOARD

The Consumer Advocate and USdirectory are currently the only parties to this proceeding. If Mr. Eickemeyer wishes to become a party to this case, he must notify the Board in writing on or before August 24, 2007.

USdirectory has retained local counsel, Mr. Robert Holz, to represent it. Mr. Holz must file an appearance pursuant to 199 IAC 7.4(7) that clarifies he is the person who is to receive service on behalf of USdirectory in this proceeding.

Any party who communicates with the Board should send an original and ten copies of the communication to the Executive Secretary, 350 Maple Street, Des Moines, Iowa, 50319-0069, accompanied by a certificate of service. One copy of the communication should also be sent at the same time to each of the other parties to this proceeding, except that three copies must be served on the Consumer Advocate. 199 IAC 7.4(6)"c."

These procedures are necessary to comply with Iowa Code § 17A.17 and 199 IAC 7.22, which prohibit ex parte communication. Ex parte communication is when one party in a contested case communicates with the judge without the other parties being given the opportunity to be present. In order to be prohibited, the communication must be about the facts or law in the case. Calls to the Board to ask about procedure or the status of the case are not ex parte communication. Ex parte communication may be oral or written. This means the parties in this case may not communicate about the facts or law in this case with the undersigned administrative law judge unless the other parties are given the opportunity to be present, or unless the other parties are provided with a copy of the written documents filed with the Board.

The materials that have been filed in this docket are available for inspection at the Board Records and Information Center, 350 Maple Street, Des Moines, Iowa 50319. Copies may be obtained by calling the Records and Information Center at (515) 281-5563. There will be a charge to cover the cost of the copying. Board orders are available on the Board's Web site at www.state.ia.us/iub.

All parties should examine Iowa Code §§ 476.3, 476.103, and Board rules at 199 IAC 1.8 and 22.23, and chapters 6 and 7, for substantive and procedural rules that apply to this case.

IT IS THEREFORE ORDERED:

1. Pursuant to 199 IAC 6.7, the written complaint and all supplemental information from the informal complaint proceeding, identified as informal complaint file C-07-152, are part of the record of this formal complaint proceeding.

2. If Mr. Eickemeyer wishes to become a party to this case, he must file written notice with the Board no later than August 24, 2007.

3. If any party wishes to file a prehearing brief, the party should do so no later than August 24, 2007.

4. If any party wishes to have a witness connected to the hearing by telephone conference call, the party must notify the undersigned no later than August 24, 2007.

5. A hearing for the presentation of evidence and the cross-examination of witnesses will be held in Board Conference Room 3, 350 Maple Street, Des Moines, Iowa, on Wednesday, August 29, 2007, beginning at 9:30 a.m. In preparing exhibits for the hearing, the Consumer Advocate should use exhibit numbers one and following. USdirectory should use exhibit numbers 100 and following. Persons with disabilities requiring assistive services or devices to observe or participate should contact the Board at 1-515-281-5256 no later than five business days prior to the hearing to request that appropriate arrangements be made.

6. In the absence of objection, all data requests and responses referred to in oral testimony or on cross-examination will become part of the evidentiary record of these proceedings. Pursuant to 199 IAC 7.23(4)"d," the party making reference to the data request must file one original and three copies of the data request and response with the Executive Secretary of the Board at the earliest possible time.

7. Any person not currently a party who wishes to intervene in this case must meet the requirements for intervention in 199 IAC 7.13. The person must file a petition to intervene on or before 20 days following the date of issuance of this order, unless the petitioner has good cause for the late intervention. 199 IAC 7.13(1).

UTILITIES BOARD

/s/ Amy L. Christensen
Amy L. Christensen
Administrative Law Judge

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

Dated at Des Moines, Iowa, this 5th day of July, 2007.